

Childcare Bill Consultation

Consultation on
legislative proposals
for the future of
childcare and early
years provision in
England:
Implementing the
Ten Year Strategy for
Childcare



department for

education and skills

creating opportunity, releasing potential, achieving excellence

Contents Page

List of Abbreviations	2
Introduction	3
Section 1 - Early Years and Childcare Secured for the Long-Term	5
Securing Sufficient Childcare	6
Assessing and Addressing Sufficiency	7
Meeting Parents Needs	8
Securing Early Childhood Provision	10
Information to Parents	13
Implications for Local Authority Planning, Inspection, Assessment and Intervention	13
Section 2 - Reforming the Regulation and Inspection Framework	15
Framework for Early Years	16
Implications for the Free Entitlement	19
Framework for School Age Childcare	19
Separate Arrangements for Crèches	21
Additional arrangements for childminders	22
Role of Quality Assurance Schemes	22
Section 3 – Resources	24
Consultation Questions	26
Response Form	27

Abbreviations

CIS	Children Information Services
CRB	Criminal Records Bureau
DfES	Department for Education and Skills
EDLF	Early Development and Learning Framework
liC	Investors in Children
JAR	Joint Area Review
LAA	Local Area Agreement
Ofsted	Office for Standards in Education
PSA	Public Service Agreement
QA	Quality Assurance
RIA	Regulatory Impact Assessment

Introduction

1. The Ten Year Strategy *Choice for parents, the best start for children*,¹ which builds on the *Every Child Matters*² programme, outlined the government's vision to give every child the best start in life and to give parents more choice about how to balance work and family life. This will help create sustainable communities, which promote opportunity and a better quality of life for all. The strategy set out a range of measures to improve choice, flexibility and accessibility of services for families with young children; as well as the availability, quality and affordability of childcare.
2. Local authorities are key players in leading local implementation of the strategy, working in partnership across public, private and voluntary sectors, reshaping services to provide high quality and co-ordinated, family and child-centred services.
3. This consultation paper focuses on how the government plans to implement the Ten Year Strategy commitments on early years services and childcare. Since 1998 the Government has invested heavily in its childcare strategy and Sure Start to improve services for children and families. Working in partnership with local government and the private and voluntary sectors, the pattern of provision has been transformed. This investment has built up a strong foundation of services and support for parents, but important challenges remain:
 - Many families have difficulty finding affordable childcare that fits their circumstances and adapts as their children grow.
 - Services for families with young children can be poorly joined up making them more difficult to access and less effective in helping families break out of the cycle of poverty and worklessness.
 - Complexity and disproportionality in the regulatory and inspection regimes for childcare and early years services mean that parents do not have the assurance that wherever their children are cared for they will be safe and well looked after.
4. This consultation paper invites views on legislative proposals:
 - to place early years services and childcare on a secure long-term footing (Section 1) and
 - to reform the regulation and inspection regimes for childcare and early years provision (Section 2).

Section 3 sets out the resource implications of the proposals, more

¹ *Choice for parents, the best start for children: a ten year strategy for childcare*(HMSO 2004)

² Department for Education and Skills 2003.

details of which are included in the draft Regulatory Impact Assessment which is at Annex A.

5. These proposals are supported by other measures implementing the Ten Year Strategy including, extension and changes to parental leave and pay³; increases in the limits of the childcare element of the Working Tax Credit; and reform of the children's workforce. The government is currently consulting (until 22 July) on the children's workforce strategy which is looking at how best we can create and support a world class workforce⁴.
6. This is the first step in the process of turning early years and childcare policy commitments into fully implemented practice - through legislation and beyond. The intention is to commence the proposed legislation with effect from April 2008. There will be further opportunities for stakeholders to be involved in the dialogue and make their views known as draft legislation is introduced and passes through parliament, and as more detailed provisions are developed through regulations and statutory guidance.
7. We welcome views on any aspect of the proposals set out in the paper and are particularly interested to receive comments on the specific questions asked in each section. Besides seeking views in writing, to ensure that this is an active consultation we will be arranging various events to involve interested parties and enable as wide a range of stakeholders as possible to contribute.
8. Written responses should be sent by Friday 7 October 2005 to

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Castle View House
East Lane
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³ Work and Families, Choice and Flexibility, Department of Trade and Industry, Feb 2005

⁴ www.dfes.gov.uk/consultations/conDetails.cfm?consultationId=1310

Section 1 - Early Years and Childcare Secured for the Long-Term

9. Since the late 1990s local authorities have had a growing strategic role in planning, commissioning and delivering services for young children and their families, including facilitation of their local childcare market - some for much longer than this and many with great success. The significant increase in services to date has been driven through hypothecated grant funding and targets. This approach was appropriate in the early phases of service development, but the remaining challenges require greater flexibility and scope for locally determined action- for example, where services need to cater for a dispersed rural population. The aim is to enable authorities and their partners to respond to parents' need for affordable childcare and for easy access to early years services which meet their families' needs.
10. The aim is to legislate to sustain this enhanced provision and ensure that its continued development reflects local needs and circumstances. The key aim for any underpinning regime is that it should provide assurance of a long-term commitment to early years services and childcare, without creating new administrative burdens or service costs for local authorities.
11. Rising levels of resource to support the development of childcare and integrated early years services have been flowing to local authorities and their partners since 1998, progressively increasing the proportion of the under five population served by Sure Start local programmes and children's centres. For example, as set out in the Regulatory Impact Assessment accompanying this document, by 2008, on current plans, around £1.65 billion a year would be available to local authorities for integrated early years services. The proposals for duties on local authorities will be financed within the additional resources which have already been made available and future funding levels which will be determined through the normal spending review mechanisms.
12. Local authorities will be expected to continue to work closely with service providers from all sectors - voluntary, community, private and maintained - to further develop the variety and extent of services so that they meet local needs. The government is committed to ensuring that these duties do not place new unfunded burdens on local authorities or their partners.
13. Statutory underpinning for existing local authority strategic responsibilities for early years services and childcare will complement their existing statutory duties for the provision of early education and place all these services more firmly within the *Every Child Matters* framework. Under this framework local authorities and their children's trust partners are already working with key local agencies including voluntary and private sector organisations to improve child outcomes. . Development of this approach will enable consideration of a move away from the centrally-run model under which childcare provision and early years services have been expanded.

14. This significant investment since 1997 has also supported growth in the extent of early years and childcare services and the variety of providers – with voluntary and private sectors playing a key role in delivery alongside the maintained sector. Together with local authorities they are progressively developing services which listen and respond to the needs of parents and children. In exercise of their new duties the aim is that local authorities should continue to foster this wealth and diversity of provision.

Securing Sufficient Childcare

15. The Ten Year Strategy included proposals for a new duty to be placed on local authorities to secure sufficient childcare to meet the needs of their areas. This duty will require authorities to shape and support the development of childcare provision in order to make it flexible, sustainable and responsive to the needs of the community, rather than centrally-driven targets. The aim is that parents will be able to find childcare locally that meets their needs and enables them to make a real choice about work.
16. We are considering how best to define the scope of the duty in legislation in order to achieve the desired aim without creating new unfunded burdens for local authorities. There is a potential tension between a duty that is broad enough to allow local authorities the scope to develop their own profile of provision that best meets local needs, and a duty that is so vague as to be ineffective, or that would risk becoming an open-ended burden. Similarly, a duty that is too narrowly defined could preclude authorities from addressing an unusual local variation in demand, or could have perverse effects that use resources without meeting local needs.
17. However the duty is framed, local authorities will need to demonstrate that the available provision meets the needs of parents in local areas. To fulfil their duty, local authorities will need to assess the local childcare market to develop a realistic and robust picture of parents' current and future need for childcare. The authority will compare this assessment of parents' demand for childcare with information about the current and planned availability of childcare places. This assessment will provide a context for local planning through children's trusts, allowing authorities to work effectively with local partners, including the private and voluntary sectors, to fill gaps in the market. Guidance will illustrate models of childcare assessment and development that could be used.
18. We propose that the duty will be to secure sufficient childcare for children up to the September after the child turns 14 (the September after the child turns 16 for disabled children). The choice of age 14 reflects the commonly accepted view that this is the age at which most children can look after themselves for periods that allow parents to work. The age is extended for disabled children some of whom will require childcare until the end of compulsory school age. This would

mean that local authorities meeting this duty would secure sufficient care for children for the school year in which they are 13/14 (15/16 for disabled children). We decided to not use the day on which the child turns 14 (or 16 for disabled children) as the cut-off point because that could then result in a child being prevented from participating in activities for the remainder of that school year. For example, under our proposals, a child who turned 14 in January would be able to participate in activities for the whole of that school year.

Assessing and Addressing Sufficiency

19. The aim is that the authority's assessment of the local childcare market should generate an overall picture of parents' use of and demand for childcare in the local authority area. Through this analysis, local authorities and their partners will be able to identify gaps in childcare provision where parents' needs are not being met.
20. We propose that local authorities should have regard to statutory guidance when carrying out their assessment of parents need for and availability of childcare provision. This guidance will be developed in consultation with stakeholders, will be based on existing best practice and include requirements to be pro-active in seeking the views of parents, children, providers and the wider local community including representative groups. It will require authorities to take into account complaints from parents received since the last assessment. In addition, the authority will be required to use other means to assess provision of and need for childcare in their area, for example, neighbourhood level population, income and labour market data; information from inspectorates including Ofsted; as well as surveys of families and providers.
21. This assessment of current provision would be set against a judgement of sufficiency. The duty will be fulfilled if the childcare market in a local area allows parents to make a choice about working. The local authority's fulfilment of the duty will be assessed through the Joint Area Review (JAR) process and will be part of Annual Performance Assessments - thus feeding into Comprehensive Performance Assessments.⁵ Parents will be able to complain to the authority if their childcare needs are not met. Any such parental complaints will be made available to Ofsted to consider as part of the JAR.
22. We have identified two groups of working parents for which the market is less likely to operate effectively to provide childcare: lower-income families because of the higher business risk for private providers to set up in less affluent communities; and families with disabled⁶ children because there is some evidence that providers feel unable to meet

⁵ CPA – The harder test, Audit Commission (2005)

⁶ Disabled children means children covered by the definitions in the Disability Discrimination Act 1995 as amended by the Disability Discrimination Act 05.

their needs.⁷ We propose to legislate to require local authorities to have specific regard to the needs of these groups. Childcare for an area could not be judged as sufficient unless it meets the needs of the community in general and these two groups in particular.

23. Lower income will be defined with reference to eligibility for the childcare element of the Working Tax Credit. By focusing on lower-income families local authorities will also have to consider the particular issues around access to childcare for black and other minority ethnic families, lone parents and those making the transition to work including those training, as these are disproportionately represented among lower-income groups. Authorities will also need to consider availability of childcare to support parents working atypical hours as this can be a common feature of low wage jobs. We propose that all local authorities will be required to secure sufficient childcare eligible for the childcare element of the Working Tax Credit.
24. It is not the intention to oblige authorities to meet the individual childcare needs of every working family, but to ensure that at a community level the authority is taking strategic action with its partners to address gaps in childcare. Authorities would be expected to support the development of childcare where there is sufficient parental demand such that a childcare setting or childminder could operate sustainably. Examples of how they could address gaps include providing training and business support to providers, to help providers run efficiently; providing market information to providers; and supporting networks of and links between providers. This reflects existing best practice in local authorities.
25. Local authorities should only be required to secure childcare of sufficient duration and reliability to enable parents to make a real choice about work. We therefore propose to legislate to require local authorities to act to secure sufficient childcare that is: registered by Ofsted, on school premises, managed by a school, or is eligible for the Ofsted Childcare Register (see paragraph 74). The quality of these types of childcare is assured through the regulatory framework.
26. Local authorities will be able to support other types of childcare if they determine there is a need, but will only be judged on the sufficiency of childcare identified above. The new childcare duty draws together many of the activities that local authorities already undertake as part of the Sure Start, children's centres and extended schools programmes, with some of their existing statutory duties.

Meeting Parents' Needs

27. Parents who are looking for childcare will be able to find out what types of childcare are on offer in their area from the Children's Information

⁷ National Audit Office (2004) Early Years: Progress in developing high quality childcare and early education accessible to all, Report by the Comptroller and Auditor General

Service (CIS) run by the local authority which give information on childcare. This information will be updated regularly and available in a variety of ways, for example, booklets, telephone helplines and websites. Parents will be easily able to identify childcare eligible for financial support either through tax credits or employer supported childcare schemes.

28. If parents cannot find childcare which meets their needs from the CIS they can seek further assistance and support from the local authority to help them secure childcare – for example, liaising with local providers on availability or to see whether more childcare can be provided, and other ways of helping parents access available childcare. Parents will be able to complain to the local authority if their childcare needs are not met through these arrangements. Such complaints will be made available to Ofsted to consider as part of the Joint Area Review (JAR). We are also considering whether additional mechanisms need to be set in place in order to give a transparent complaints system for parents.
29. Parents will be consulted by local authorities on their need for childcare and how they might change over time, as part of the assessment process described in paragraph 17. In addition to this, parents already benefit from all three and four year olds being entitled to a free part time nursery education place. The Ten Year Strategy made the commitment that this entitlement is being extended from 33 weeks a year to 38 weeks a year from 2008; from 12.5 hours a week to 15 hours a week by 2010 (beginning in 2007) with an eventual goal of 20 hours a week. Parents will also benefit from extended schools. The aim is that by 2010 all parents of primary school children will have year-round access to childcare from 8am to 6pm through their school, with the result that most childcare for school-age children will be linked to an extended school, although not necessarily provided by it.

Q1- Does the primary aim of ensuring the availability of childcare to enable parents to work, along with a particular focus on lower-income families and those with disabled children, form an appropriate basis for defining scope and judging sufficiency?

Q2 – Apart from the issues set out above, are there other significant issues that should be included in the guidance for local authorities?

Q3 – What are the issues that need to be addressed to provide parents with an accessible complaints mechanism?

Securing Early Childhood Provision

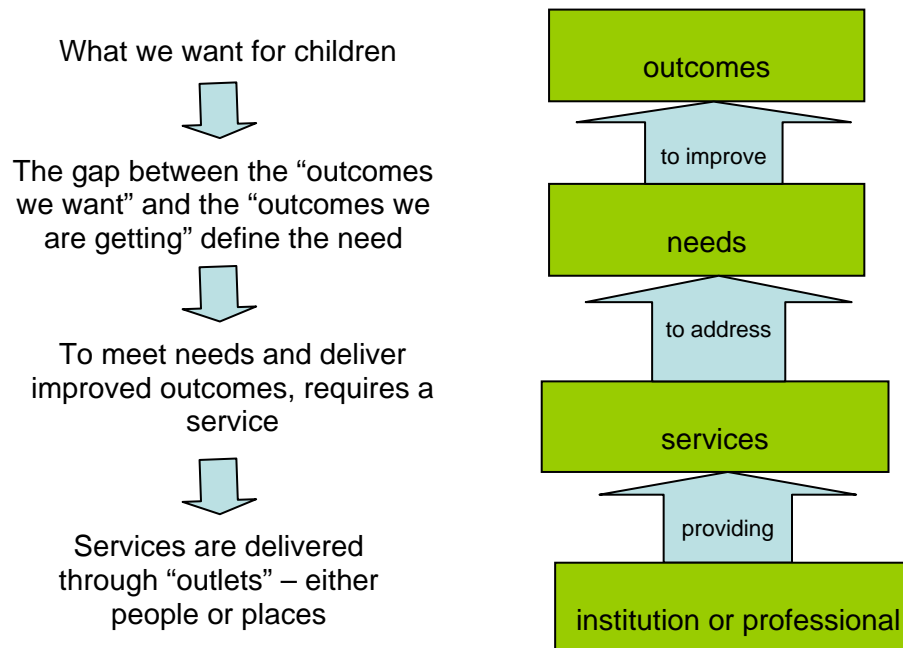
30. Research⁸ has shown that effectively integrated care, education, health and wider children and family services that reach out to families can make a real difference to the lives of children. Delivery that is focused on the outcomes for children, achieved through services that seamlessly provide for their needs, will create the best chances for all children.
31. Rising levels of resource flowing to local areas since 1998 have progressively increased the proportion of the under five population served by Sure Start local programmes and children's centres. The Ten Year Strategy included a commitment to have integrated early years services available through children's centres for all under fives and their families (target of 3500 centres) by 2010. The aim is to legislate to provide some certainty that the level of early childhood services will be sustained as this style of service delivery matures into mainstream activity. Such assurance would enable future consideration of whether ringfenced funding arrangements can be relaxed, in line with the trend towards giving local authorities greater flexibility over the use of resources.
32. The research has shown that the chances of success in improving outcomes are enhanced where there is close working between local authorities and partners such Primary Care Trusts providing local health care. The Department of Health welcomes the commitment to partnership working through the children's centres model which provides good opportunities for health benefits and improvements in health outcomes.
33. The key characteristic of any underpinning regime is that it should provide assurance of a longer-term commitment to early years services without creating new administrative burdens or service costs for local authorities. The means of securing the future should fit with existing business planning and performance management systems and be compatible with how these are developing; bearing in mind that legislation would not be commenced before 2008. It must also be flexible to allow local authorities and their partners to work in ways that most effectively reflect local circumstances.
34. To achieve this we have considered the most effective way of influencing key points in the system. The diagram (fig 1) illustrates the relationships between different activities within the system, from strategic goal-setting to service delivery. The system is dynamic and a statutory provision that targets one element alone would risk distorting the interdependencies and how the whole system functions. For example, a statutory duty focused solely on establishing children's centres would risk an over-emphasis on institutions which could

⁸ The Effective Provision of Pre-School Education (EPPE) Project: Final Report, A Longitudinal Study funded by DfES 1997- 2004

become an end in itself, regardless of whether the desired improvement in outcomes is achieved. Our proposal to secure early years provision starts with a focus on outcomes but then impacts on all four tiers of the system.

Figure 1

Delivery System



35. We propose placing a duty on local authorities to improve the well-being of children up to five by improving the outcomes for all children and by narrowing the gaps between groups with poor outcomes and the rest. Such a duty would address the “outcomes” and “needs” tiers of the system and would be consistent with the *Every Child Matters* outcomes.
36. The proposal would build on the existing duties for co-operation between relevant partners under the Children Act 2004, as reflected in the development of children’s trusts. Children’s trusts will have a critical role to play in determining the services needed to drive forward improved outcomes in children’s health and well-being, as well as in education and social care. Implementation of the duty would be taken forward with active engagement of relevant partners such as Primary Care Trusts, in strategic planning in Children and Young People’s Plans.
37. To ensure integration of service delivery we propose that the duty to improve outcomes would be supported by a statutory requirement to establish a pro-active, accessible early years service focused on the under fives and a new power giving statutory status to guidance on the

children's centre delivery model. These provisions would act on the "services" and "institution or professional" tiers of the system.

38. Giving early years services a statutory underpinning will give a status consistent with other local authority responsibilities. The outcomes defined will need to fit with Public Service Agreement targets and key performance indicators which already focus on improving and reducing inequalities in children's communication, social and emotional development and reducing the number of children living in households where no-one is working. Relating the duty to closing the gaps in outcomes will ensure ongoing attention to all disadvantaged groups including low income families, black and minority ethnic families, and those with disabled children. Giving these responsibilities statutory weight would also provide accountability by ensuring early years services are integrated into local authority performance assessment. Appropriate performance measures for early years services will feature in Annual Performance Assessments and Joint Area Reviews, both of which inform the Comprehensive Performance Assessments framework.
39. We are considering whether and how performance indicator systems might need to evolve to provide the required degree of assurance prior to commencement of the new duty. In doing so we are taking into account the intention to implement Local Area Agreements (LAA) across the country by the time the new duty is commenced and the aim to streamline performance management and information arrangements. Under-performance would be addressed through established procedures of action by the Government office as described in the recent LAA Guidance.⁹
40. We envisage that required elements of an early years service will be set out in legislation for example, access to integrated early learning and childcare; parenting and family support; and health (including maternity services). The key elements of the preferred delivery style would also be specified in legislation, for example, that service delivery should be integrated, actively reach out to children and families and include community and parental involvement in planning and delivery. While the status of guidance on children's centres will be strengthened by placing it on a statutory basis, setting out further detail of the preferred delivery style in guidance rather than in legislation itself, will allow flexibility for innovation and to take account of local circumstances such as rural areas and more affluent areas (revised children's centres guidance for Phase 2 (2006-08) is being developed and will be issued shortly). It will also be more easily updated to take account of developments over time, resulting, for example, from research findings. In reviewing the guidance to take account of the new statutory context, we will work in consultation with stakeholders.

⁹ Local Area Agreements Guidance placed on Office of the Deputy Prime Minister website 4 July 2005 (www.odpm.gov.uk)

41. Creating statutory underpinning in this way demonstrates the government's continuing commitment to the Sure Start ethos and integrated services. A duty to improve outcomes embodies the *Every Child Matters* approach and retains the right emphasis on ensuring services meet identified needs without creating new costs. We believe the combination of a duty to improve outcomes, together with requirements for an early years service backed up by statutory guidance, all of which fits within mainstream co-operative planning, inspection and assessment retains the necessary flexibility but will provide the desired degree of assurance that Sure Start services will be secure and sustained in the future.

Q4 – Is this an effective way of placing children's centres on a secure long-term footing, while retaining the flexibility necessary for effective implementation and avoiding creating new burdens?

Information to Parents

42. Local authorities have an existing duty to establish and maintain a service providing information to the public about childcare and related services in their area. They fulfil this requirement by running Children's Information Services (CIS) which predominantly offer guidance on availability of childcare and nursery education and some signposting to other services.
43. The Ten Year Strategy made clear the government's intention that information about children's services should empower parents to act as informed consumers and be available in places visited by parents - in particular children's centres and extended schools. Although some authorities go beyond their existing duty and provide comprehensive children's information services, in other areas such information services, especially with regard to parental support services are patchy and uncoordinated.
44. We therefore propose to broaden the existing duty to one which requires local authorities to ensure parents with children aged 0-19 have access to the full range of information they may need as parents.
45. As a minimum, the aim is that the local authority would ensure that parents can be effectively guided towards sources of local and national support and to local service directories. To achieve this we propose that local authorities should have regard to statutory guidance on the exercise of this duty. Such guidance would incorporate the key requirements from the CIS Strategy issued in November 2003 and would take account of guidance issued on children's centres and extended schools.

Implications for Local Authority Planning, Inspection, Assessment and Intervention

46. As the new duties described above (paras 15 to 47) would be

integrated into the *Every Child Matters* framework they would be subject to the existing planning, monitoring and intervention arrangements. Local authority plans for facilitating the childcare market and securing early childhood services and information to parents will be included in their Children and Young People Plan. Services will be commissioned and delivered in partnership with other local stakeholders from the public, voluntary and private sectors through the children's trust arrangements.

47. Local authority performance against the duties will be measured through the Annual Performance Assessment, the Comprehensive Performance Assessment and subject to inspection through the Joint Area Review (JAR). Any complaints made to the local authority about provision or providers in their area will have to be recorded and made available as part of the JAR process. The Secretary of State will have the power to intervene or direct local authorities where they are failing to fulfil these duties or exercising them in an unreasonable way.

Q5 – Will the proposals for these new duties on local authorities enable the existing wealth and diversity of providers to flourish and develop?

Section 2 - Reforming the Regulation and Inspection Framework

48. Under the Children Act 1989, providers of childcare for children up to the age of eight – including day nurseries, kindergartens, nursery schools, playgroups, pre-schools and childminders (where children aged under eight are looked after for more than two hours in any day or five days in any year) are required to be registered by Ofsted. Such settings are visited prior to operating and regularly inspected. There is a range of childcare regularly used by families which is exempt from registration. Carers in the family home like nannies are exempt but eligible for the Childcare Approval Scheme;¹⁰ and babysitters operating between certain hours and relatives are also exempt from the requirement to be registered.
49. Providers need not be registered to deliver government funded early education (for three and four year olds) but must meet any conditions set by their local authority in line with Code of Practice on the Provision of Free Nursery Education Places¹¹ and must offer activities and experiences which enable eligible children to work towards the early learning goals as described in Curriculum Guidance for the Foundation Stage¹². In reality, many providers of early education are also registered by Ofsted to provide day care and, therefore, must meet both sets of requirements.
50. Research¹³ has shown that integrated settings which fully combine education with care, along with nursery schools and classes, promote better intellectual and social development in children. For young children, care and learning happen together and a good quality care setting will provide a child with many of the experiences they need to learn and develop. Existing legislation distinguishes between care and education and separate regulatory and inspection arrangements exist for each. This does not reflect the reality of the way early years providers increasingly operate, or the way in which children learn and develop. The Ten Year Strategy, therefore, made the commitment to create a single framework for early education and childcare services for children from birth to the end of the Foundation Stage.
51. Since 1998 the Government's childcare strategy has stimulated considerable growth in the amount of childcare available for children of school age. In addition the government is committed to provide access to extended services including 8am to 6pm childcare through all primary and secondary schools by 2010. It is important that parents can be confident that this care provides a safe environment for their child, but any regime to secure this must be proportionate to risk. We also need to ensure that childcare that can enable parents to work is

¹⁰ A scheme operated under contract to DfES under tax credit legislation.

¹¹ The Code of Practice is published by DfES and available at www.surestart.gov.uk/ensuringquality/guidance/freenurseryeducation/

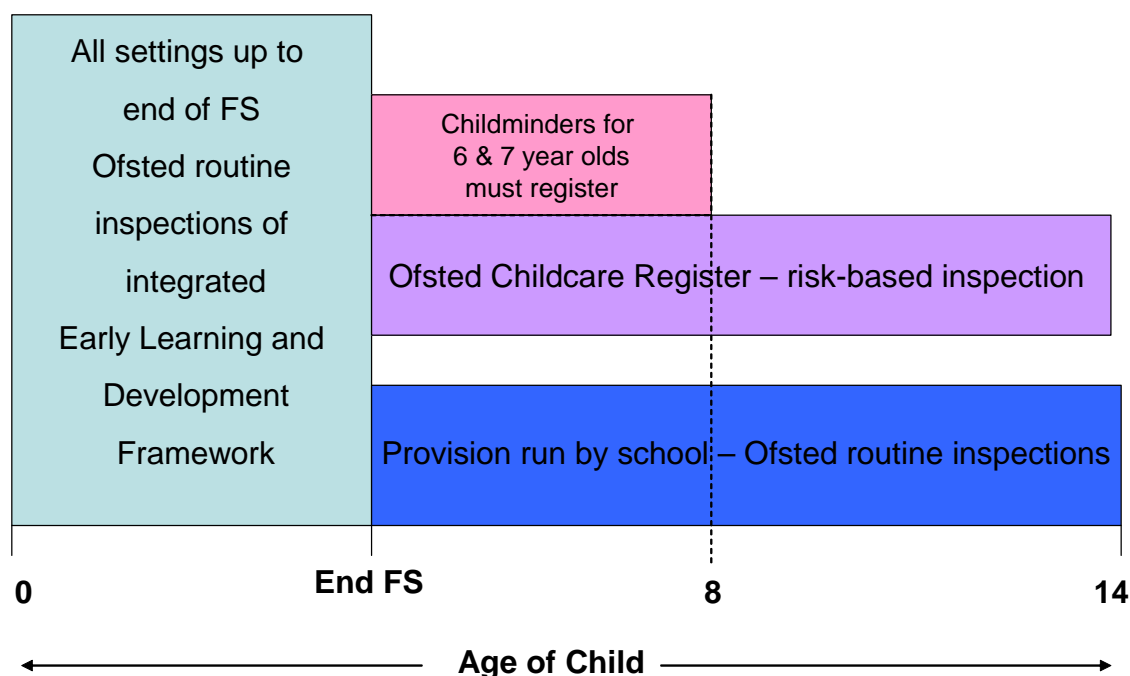
¹² The Curriculum guidance is published by QCA and is available at www.qca.org.uk/223.html

¹³ Ibid 8

eligible for financial support through tax credits and employer supported childcare schemes.

52. The current system for the regulation and inspection of childcare and nursery education has grown over time against this rapidly changing context to produce a complex set of arrangements. With a clear direction of travel for the future role and shape of the childcare market, the Ten Year Strategy committed the Government to review and reform its regulatory framework.
53. This section sets out our proposals for new arrangements simplifying and streamlining the existing system for regulation and inspection. The figure below gives an overview of the elements of the new system, which are explained in more detail in the following paragraphs.

Figure 2



Framework for Early Years

54. To ensure that young children are able to access the same high quality experience regardless of the type of setting they attend, from 2008 all early years providers will be expected to deliver high quality, integrated provision. We propose to create a new legal framework that removes the current distinction between care and education and the separate regulatory and inspection requirements that exist for each.
55. This legal framework will underpin the new quality framework which will take an integrated approach to care and education and will bring together *Birth to Three Matters* and the Foundation Stage and incorporate elements of the national standards for under 8s day care and childminding. Our working title for this quality framework is the Early Development and Learning Framework (EDLF).

56. We will consult widely with practitioners and experts during 2006 to inform the development of the EDLF. The EDLF will define the minimum standards which provision must meet. These are likely to include standards about children's health and safety, and to ensure that adults coming into contact with children are suitable to do so. The EDLF will also set out principles for improving the quality of the child's experience whilst at the setting.
57. The EDLF will enable providers to see the contribution their work with children in their earliest years makes to the children's achievement against the early learning goals at the end of the Foundation Stage. It will help to support observation and assessment to inform early learning and development opportunities from birth, and support even earlier identification and intervention of particular needs. It will enable a continuity of approach covering care, learning and development opportunities from birth to the end of the Foundation Stage.
58. It will also support wider integration and the bringing together of other services for young children such as health visitors, reinforcing the principles of the children's centres approach. This will in turn help ensure that the child's experience in these centres is of the highest quality and support consistency of provision. The framework will also enable schools to offer high quality opportunities as part of any extended schools plans for children up to the end of the reception year.
59. The EDLF will build on the key aims and principles of both the *Birth to three matters framework* and the *Curriculum guidance for the Foundation Stage* – these documents can be viewed at www.surestart.gov.uk. It will focus on meeting the individual needs of children and highlight the importance of learning through play. The EDLF will support practitioners in creating stimulating, inclusive, caring and learning environments so that all children have the opportunity to reach their full potential.
60. This consultation seeks views on proposals for the overarching legal framework within which the EDLF will operate. The legislation will define the settings which will be required to use the EDLF and the registration and inspection arrangements which will apply to them.
61. The aim is to create a system that ensures the experience for the child is of the same high quality, irrespective of the setting or sector; that this is sufficient flexibility within the system to provide parents with real choice; and to act as a lever for continuous improvement. We therefore propose that all settings offering care for more than two hours to children up to the end of the Foundation Stage (that is, the end of the school year in which the child turns five) will be required to deliver the EDLF and inspected against it. This would include day nurseries, preschools, playgroups, childminders, and maintained and independent schools.
62. In considering whether early years providers should be required to be

registered by Ofsted, we have taken into account the recent Gershon and Hampton reviews, and the wider Government agenda to reduce bureaucracy and minimise the regulatory burden on both private and voluntary sector businesses and on public sector services. We will not regulate or inspect unless the risks justify it, and we will not put regimes in place where there is already something else capable of fulfilling our requirements.

63. We therefore propose that all early years provision from birth to the end of the Foundation Stage in private and voluntary sector settings which are not schools (including such providers operating on school sites) will be required to be registered and inspected by Ofsted. There are no other inspection or regulatory arrangements in operation for this category of provider, and we are therefore satisfied that this proposal is necessary and proportionate.
64. Since a regime already exists for the inspection of schools, we propose to capitalise on this and only require registration where this would be proportionate to risk. It is essential that the youngest and most vulnerable children are protected through the additional safeguards afforded by registration, monitoring and enforcement by Ofsted. Therefore, maintained and independent schools will be required to have all provision for children who have not yet reached their 3rd birthday separately registered by Ofsted. They will not be required to have their early years provision above that cut-off point registered, as, that provision will be inspected as part of the whole school inspection.
65. Ofsted will still continue to inspect maintained provision up to the end of the foundation stage, but the enforcement regime for early years provision for this age group will be the same as that for the rest of the school. We will ensure that arrangements for handling parental complaints about childcare in schools are developed as part of the work already in hand to strengthen parental rights to complain about schools.
66. Recent changes to Ofsted's inspection arrangements have enabled them to inspect 'care' provision and 'education' provision as part of a single inspection, although the single report makes separate judgements for care and education. Under the EDLF, Ofsted will inspect integrated care and education as a single entity and make a single judgement about the quality of provision.
67. It is likely that inspections of the EDLF will evolve from the new integrated inspections under the current framework. Support will be available from local authorities to help providers meet the requirements of the new framework.

Q6– Does the approach to registration outlined in paras 64 and 65 strike the right balance and capitalise appropriately on other inspection regimes?

Implications for the Free Entitlement

68. With the introduction of the EDLF the free entitlement to nursery education will be recast as an entitlement to free early years provision i.e. fully integrated care and education. In order to deliver the free entitlement providers will be required to meet additional criteria. These will be decided on as part of the consultation on the EDLF next year but are likely to include the types of criteria currently included in the Code of Practice, e.g. involvement of a SENCO, commitment to staff training.
69. In the Ten Year Strategy the Government committed to increasing the current free entitlement to nursery education of 12.5 hours per week over 33 weeks of the year, to 12.5 hours a week for 38 weeks of the year by 2006. And then to 15 hours a week for 38 weeks by 2010.
70. To ensure children are receptive to learning we propose to require that the free entitlement is delivered between 9am and 4pm over a minimum of three days. However, to enable the free entitlement to be delivered as flexibly as possible and to best meet the needs of parents and children, no activities, for example meal times or rest times, will be specifically excluded from the free entitlement. Providers will have to demonstrate to Ofsted that children are able to access the whole curriculum.

Framework for School Age Childcare

71. All providers of childcare (irrespective of the age of the child) are subject to legislation designed to ensure a basic level of safety and protection; including the requirements for Criminal Record Bureau checks for staff,¹⁴ health and safety regulations and environmental health requirements. Together these satisfy the requirements for a minimum safety threshold, but parents rightly seek an easily accessible way of knowing that provision is suitable for children.
72. We considered the option of extending a registration requirement to all providers up to age 14 (16 for disabled children). But as there is no evidence that this would be necessary to ensure children's safety, this would be disproportionate as well as inconsistent with the Gershon¹⁵ and Hampton¹⁶ review proposals to reduce the regulatory burden and eliminate unnecessary inspection.
73. By 2010 all parents of primary school children will have year-round access to childcare from 8am to 6pm through their school, with the result that most childcare for school-age children will be linked to an extended school, although not necessarily provided by it. Any

¹⁴ proposals to strengthen these arrangements to be implemented in 2007.

¹⁵ *Releasing resources to the front line* – Independent Review of Public Sector Efficiency. Sir Peter Gershon CBE, July 2004.

¹⁶ *Reducing administrative burdens: effective inspection and enforcement*. Philip Hampton, March 2005.

childcare provided by or managed on behalf of the school on the school site will be inspected by Ofsted as part of the School Inspection Framework.

74. These arrangements would not, however, capture all childcare for school-age children. Some schools will link with providers off their school sites and other providers will continue to flourish without school links. In order to ensure that these providers meet key standards and that the parents who use them are able to qualify for financial support through tax credits and employer supported childcare schemes, we propose that Ofsted should maintain a register of providers of childcare who have committed to keeping children safe and well cared for. All providers wishing to be included on this register will have to comply with minimum standards of provision.
75. Currently providers offering group childcare of more than two hours duration for children under eight years old must meet national standards and be registered by Ofsted. Paragraphs 54 and 67 outline our proposals for regulating settings that provide for children up to age five. Paragraphs 71 and 84 outline our proposals for childcare for school aged children and in view of these combined arrangements, the requirement to register for providers of group childcare for children aged six and seven does not seem necessary, and so we propose that it is removed.
76. These proposals offer benefits to parents, schools and therefore in turn the providers themselves. Provision that is successful in applying for inclusion on the Ofsted Childcare Register will become eligible for working tax credits and employer supported childcare schemes. This will ensure that families can have confidence their children are well-cared for, no matter their personal and financial background. Schools when securing their extended offer with private and voluntary sector providers will receive guidance from DfES to contract only with providers on the Ofsted Register. Local Authorities will be clear in their information to parents which providers in their area have been registered.
77. We propose that providers applying to the Ofsted Childcare Register will need to ensure:
 - relevant staff have suitable childcare qualification(s)
 - they comply with limits on staff : child ratios
 - they display for parents evidence (e.g. certificate) that proves registration, and information about the criteria that the provider has therefore met
 - they publish a complaints procedure that parents can follow, including both internal complaints and also recourse to Ofsted on failure against minimum standards and criteria

- all staff have an up to date CRB check
 - at least one member of staff present to be suitably qualified in first aid
 - they have public liability insurance
 - all health and safety risks have been assessed and reasonable adjustments made.
78. Providers who are successful in demonstrating these criteria will become eligible for financial support and it is important that parents will be able to rely on the provision to be able to work. We propose that providers who apply to the Ofsted Childcare Register should operate for a minimum of at least two hours or be joined up with school provision to secure a period of two hours. The provider would also need to demonstrate that if provision is cancelled an alternative will be arranged by the provider or manager of the provision.

Q7 - Do the proposed criteria for entry to the Ofsted Childcare Register do enough to deliver quality provision and cover the minimum standards needed to ensure safe and reliable childcare provision?

Q8 - Will the benefits of the proposed Ofsted Childcare Register encourage providers to apply?

Q9 – Should the required ratios be flexible depending on age and setting, and what ratios would be appropriate?

79. Providers on the Ofsted Childcare Register will be subject to spot check inspections. Ofsted will be able to remove providers from the register if they are found to be unsuitable or not to be complying with the minimum criteria following a spot check inspection, information from other agencies or a complaint. Providers will be able to appeal to the Care Standards Tribunal against a decision to cancel their registration.
80. To help authorities fulfil their duty to provide information to parents (see para 42 et seq), Ofsted will pass to local authorities details of providers in their areas who are on the register.
81. We will consult further on the necessary secondary legislation and detailed arrangements for inspection and enforcement to ensure the needs of children are balanced appropriately with regulation.

Separate Arrangements for Crèches

82. Crèches offering occasional care while parents engage with other activities of short duration (sport, shopping) would be subject to the basic safety standards described in paragraph 71. In addition they are currently subject to national standards and Ofsted registration requirements, but we do not believe that this level of regulation is

justified by the risk such settings present,¹⁷ bearing in mind the length of time children are cared for and the proximity of their parents. We therefore propose that in future crèches (defined as caring for individual children for two hours or less whilst parents are elsewhere on the premises) would be able to apply to the Ofsted Childcare Register, with the benefits that brings described in para 57, provided they meet the criteria outlined.

Additional Arrangements for Childminders

83. Children below compulsory school age are likely to spend extended periods of time with a childminder while their parents are at work so it is appropriate that these childminders are registered and continue to deliver the integrated framework (see para 55). Children of six and seven will be at school most of the day so will spend far less time with a childminder. We believe that these childminders, who will not deliver the integrated framework as they care for children after the end of the foundation stage, should still be subject to a degree of regulation. We see here a fundamental difference between a group setting and an individual caring for a child in a domestic setting that is not the child's home.
84. In view of this, we propose that these childminders who care for children from the end of the foundation stage up to their 8th birthday should be required to be on the Ofsted Childcare Register. This will ensure that the childminders will be checked against minimum standards and be appropriately qualified. It will continue to be a criminal offence for a childminder to look after children under eight without registration.

Q10 – Is it appropriate to continue to require registration of childminders for children up to age eight?

Role of Quality Assurance Schemes

85. Quality assurance (QA) schemes and the Investors in Children (IiC) “kitemark” have been developed over recent years to help raise quality of early years and childcare provision. QA schemes encourage reflection through self-assessment and promote a culture of continuous improvement; they may help parents identify good quality provision, and can be a useful marketing tool for providers. Providers identify their strengths and weaknesses by assessing the quality of their provision for themselves and comparing their own practices with descriptions of best practice.
86. Quality assurance schemes can therefore be a valuable tool for raising standards, but it is not clear that the existing plethora of QA schemes are an effective complement to the current regulation and inspection

¹⁷ There are currently 2,500 crèches registered with Ofsted, in a three-month period in 2004 there was only one substantiated complaint made against a crèche.

regime. The review of the regulation and inspection arrangements provides a timely opportunity to take a fresh look at the place of quality assurance schemes in the system.

87. Our aim is to ensure that there are effective levers in the system to drive up and continually improve quality, including providing parents with information about quality that enables them to make effective choices for their child.
88. liC was designed to bring together the best QA schemes under a single "kite mark". Since 2003, fifty QA schemes have achieved liC endorsement. 2003 data indicated that only around 5 - 10% of providers were members of a QA scheme at that time. It was hoped that liC would reduce the number of QA schemes operating in the system and provide a means for parents to identify good quality provision, but it is evident that these aims have not been realised.
89. Ensuring high quality services remains of prime importance. Since liC was introduced, Ofsted have developed their grading system to provide parents with more information about the relative quality of all settings, irrespective of whether they are members of a QA scheme. In the light of our proposals for a stronger quality element in the new regulatory framework, we wonder whether the liC scheme provides the most effective use of resources. For example, the new quality framework for birth to the end of the foundation stage will improve the quality of all settings caring for children of this age. The proposed new Ofsted Childcare Register would make membership of a QA scheme unnecessary for tax credit eligibility.
90. Withdrawing financial support from the liC would release savings in management and administrative resources, both centrally and locally. A greater impact on quality might be achieved by directing such resources to supporting the new framework.

Q11. Does continued financial support for the liC scheme represent the most effective means of driving up quality?

Q12. What would be of most help to parents in choosing good quality settings?

Section 3 – Resources

91. A draft partial Regulatory Impact Assessment (RIA) is available on the DfES consultation website (www.dfes.gov.uk/consultations/). It sets out the costs to providers and public purse of the proposals in this document. Following the structure of this document, the RIA is in two parts. The first part looks at the costs and benefits of the proposed new duties on local authorities and the second part concerns the proposals for reform of the regulation and inspection regime. The final version of the RIA (to be published with the Bill) will take into account views submitted about this draft.
92. The proposed duties on local authorities (to secure sufficient childcare, provide information to parents and secure early years services – see para 9 et seq) are designed to underpin activity for which authorities are already funded and therefore would be cost neutral.
93. The proposed reforms to regulation and inspection systems are designed to achieve the greatest value for money possible through a simplified system. The rationalisation of frameworks will support this drive across all provision. We have considered costs to providers as well as to the public purse.
94. By simplifying the regulation and inspection framework, removing duplication and reducing unnecessary burdens we will significantly reduce costs to providers and central Government.
95. Fees that providers are required to pay to Ofsted for registration and inspection currently represent a small proportion of the cost of the service, as they are heavily subsidised, and there has been no increase in the fee levels since 2001. Criminal Records Bureau (CRB) Disclosures, required for regulatory purposes, are also fully subsidised.
96. As part of the reform of regulation and inspection we propose to consider carefully what fees should be charged and how any subsidies should be administered. We will look closely at what fee and subsidy arrangements would be appropriate from 2008 for the new system of registration and inspection covering providers who offer the Early Learning and Development Framework for children from birth to the end of the Foundation Stage. Similarly, we will consider the level of fees that should be charged for the new scheme for school age children.
97. We will also decide whether any transitional changes are appropriate between now and 2008, particularly bearing in mind that the fees for Ofsted registration have not been increased since 2001.
98. Our work on this will be informed by the principle that fees should reflect the costs of the service and that any subsidy should be targeted on those who need it. Specific proposals will be the subject of separate

regulatory impact assessment and consultation, as these will be related to regulations rather than the Bill itself.

Q13 – What factors should determine the balance between costs and subsidies?

Q14 – Where childcare providers need help with fees, how should a subsidy be administered?

Consultation Questions

- 1 Does the primary aim of ensuring the availability of childcare to enable parents to work, along with a particular focus on lower-income families and those with disabled children, form an appropriate basis for defining scope and judging sufficiency? (*Paragraphs 15 – 29*)
- 2 Apart from the issues set out in paragraphs 20 -26, are there other significant issues that should be included in the guidance for local authorities?
- 3 What are the issues that need to be addressed to provide parents with an accessible complaints mechanism? (*Paragraph 28*)
- 4 Is this an effective way of placing children's centres on a secure long-term footing, while retaining the flexibility necessary for effective implementation and avoiding creating new burdens? (*Paragraphs 30 - 41*)
- 5 Will the proposals for these new duties on local authorities enable the existing wealth and diversity of providers to flourish and develop? (*Paragraphs 9 – 47*)
- 6 Does the approach to registration outlined in paragraphs 64 and 65 strike the right balance and capitalise appropriately on other inspection regimes?
- 7 Do the proposed criteria for entry to the Ofsted Childcare Register do enough to deliver quality provision and cover the minimum standards needed to ensure safe and reliable childcare provision? (*Paragraph 77*)
- 8 Will the benefits of the proposed Ofsted Childcare Register encourage providers to apply? (*Paragraphs 75 -81*)
- 9 Should the required ratios be flexible depending on age and setting, and what ratios would be appropriate? (*Paragraph 77*)
- 10 Is it appropriate to continue to require registration of childminders for children up to age eight? (*Paragraphs 83 – 84*)
- 11 Does continued financial support for the liC scheme represent the most effective means of driving up quality? (*Paragraphs 85 -90*)
- 12 What would be of most help to parents in choosing good quality settings? (*Paragraph 89*)
- 13 What factors should determine the balance between costs and subsidies? (*Paragraphs 95 - 98*)
- 14 Where childcare providers need help with fees, how should a subsidy be administered? (*Paragraphs 96 - 98*)

Consultation on Childcare Bill

Consultation Response Form

The closing date for this consultation is: 7th October 2005
Your comments must reach us by that date.

department for

education and skills

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The information you send to us may need to be passed to colleagues within the Department for Education and Skills and/or published in a summary of responses received in response to this consultation. We will assume that you are content for us to do this, and that if you are replying by e-mail, your consent overrides any confidentiality disclaimer that is generated by your organisation's IT system, unless you specifically include a request to the contrary in the main text of your submission to us.

The Department may, in accordance with the Code of Practice on Access to Government Information, make available on public request, individual consultation responses. This will extend to your comments unless you inform us that you wish them to remain confidential.

Please tick if you want us to keep your response confidential. ☐

Name

Organisation (if applicable)

Address:

If your enquiry is related to the policy content of the consultation you can contact:

e-mail: childcarebill.consultation@dfes.gsi.gov.uk

If you have a query relating to the consultation process you can contact the Consultation Unit on: Telephone: 01928 794888; or Fax: 01928 794 311

e-mail: consultation.unit@dfes.gsi.gov.uk

Please tick one of the boxes that best describes you as a respondent

<input type="checkbox"/> Local Authority	<input type="checkbox"/> Private provider	<input type="checkbox"/> Secondary School
<input type="checkbox"/> PCT/Health sector	<input type="checkbox"/> Voluntary/Community Provider	<input type="checkbox"/> Independent school
<input type="checkbox"/> National organisation (please specify)	<input type="checkbox"/> Maintained Nursery school	<input type="checkbox"/> Parent
<input type="checkbox"/> Home-based carer (childminder/nanny)	<input type="checkbox"/> Primary School	<input type="checkbox"/> Other

Please specify:

Section I – Early Years and Childcare Secured for the Long Term

1 Does the primary aim of ensuring the availability of childcare to enable parents to work, along with a particular focus on lower-income families and those with disabled children, form an appropriate basis for defining scope and judging sufficiency? (*Paragraphs 15 – 29 in the consultation document*);

☐ Strongly agree

☐ Agree

☐ Neither agree nor disagree

☐ Disagree

Comments:

14 Apart from the issues set out in paragraphs 20 -26 of the consultation document, are there other significant issues that should be included in the guidance for local authorities?

Comments:

3 What are the issues that need to be addressed to provide parents with an accessible complaints mechanism? *(Paragraph 28 in the consultation document)*

Comments:

4 Is this an effective way of placing children's centres on a secure long-term footing, while retaining the flexibility necessary for effective implementation and avoiding creating new burdens? *(Paragraphs 30 - 41 in the consultation document)*

☐ Strongly agree

☐ Agree

☐ Neither agree nor disagree

☐ Disagree

Comments:

5 Will the proposals for these new duties on local authorities enable the existing wealth and diversity of providers to flourish and develop? (*Paragraphs 9 - 47 in the consultation document*)

<input type="checkbox"/> Strongly agree	<input type="checkbox"/> Agree	<input type="checkbox"/> Neither agree nor disagree	<input type="checkbox"/> Disagree
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Comments:

Section 2 – Reforming the Regulation and Inspection Framework

6 Does the approach to registration outlined in paragraphs 64 and 65 of the consultation document strike the right balance and capitalise appropriately on other inspection regimes?

<input type="checkbox"/> Strongly agree	<input type="checkbox"/> Agree	<input type="checkbox"/> Neither agree nor disagree	<input type="checkbox"/> Disagree
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Comments:

7 Do the proposed criteria for entry to the Ofsted Childcare Register do enough to deliver quality provision and cover the minimum standards needed to ensure safe and reliable childcare provision? (*Paragraph 77 in the consultation document*)

<input type="checkbox"/> Strongly agree	<input type="checkbox"/> Agree	<input type="checkbox"/> Neither agree nor disagree	<input type="checkbox"/> Disagree
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Comments:

8 Will the benefits of the proposed Ofsted Childcare Register encourage providers to apply? *(Paragraphs 75 - 81 in the consultation document)*

☐ Strongly agree

☐ Agree

☐ Neither agree nor disagree

☐ Disagree

Comments:

9 Should the required ratios be flexible depending on age and setting, and what ratios would be appropriate? *(Paragraph 77 in the consultation document)*

☐ Strongly support

☐ Support

☐ Neither support nor not support

☐ Not support

Comments:

10 Is it appropriate to continue to require registration of childminders for children up to age eight? *(Paragraphs 83 - 84 in the consultation document)*

☐ Strongly agree

☐ Agree

☐ Neither agree nor disagree

☐ Disagree

Comments:

11 Does continued financial support for the Investors in Children scheme represent the most effective means of driving up quality? *(Paragraphs 85 - 90 in the consultation document)*

☐ Strongly agree

☐ Agree

☐ Neither agree nor disagree

☐ Disagree

Comments:

12 What would be of most help to parents in choosing good quality settings? (*Paragraph 89 in the full consultation document*)

Comments:

Section 3 – Resources

- 13 What factors should determine the balance between costs and subsidies? *(Paragraph 95 -98 in the consultation document)*

Comments:

- 14 Where childcare providers need help with fees, how should a subsidy be administered? *(Paragraphs 96 - 98 in the consultation document)*

Comments:

Thank you for taking the time to let us have your views. We do not intend to acknowledge individual responses unless you place an 'X' in the box below.

Please acknowledge this reply ☐

Here at the Department for Education and Skills we carry out our research on many different topics and consultations. As your views are valuable to us, would it be alright if we were to contact you again from time to time either for research or to send through consultation documents?

☐

Yes

☐

No

How to respond and further information

The consultation response form is available at www.dfes.gov.uk/consultations/. We need to receive your response by 7th October. You can complete this on-line, or download it and post it to us. Copies of the form are also enclosed with printed copies of this consultation document and the separate summary document.

If you are responding on-line, select the "Respond on-line" option at the beginning of the consultation webpage: www.dfes.gov.uk/consultations/.

If you prefer you can send completed response form to Department for Education and Skills, Consultation Unit, Area 2A, Castle View House, East Lane, Runcorn, Cheshire, WA7 2GJ.

Or fax it to 01928 794248

Or send it by e-mail to: childcarebill.consultation@dfes.gsi.gov.uk

If you have any questions about the proposals or would like to know more

If you would like to ask us about any aspect of the proposals, please e-mail the Childcare Bill Team at childcare.bill@dfes.gsi.gov.uk.

Additional Copies

Electronic copies of the consultation document are available at www.dfes.gov.uk/consultations/.

Hard copies of the document can be requested from: Childcare Bill Team, Childcare Standards and Legislation Division, Sure Start Unit, 6-12 Tothill Street, London, SW1H 9NA

e-mail: childcare.bill@dfes.gsi.gov.uk